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2014 MAY 29 P 4:30
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In the matter of:

DOCKET NO. S-20906A-14-0063

CONCORDIA FINANCING COMPANY,
LTD, a/k/a "CONCORDIA FINANCE,"

RESPONDENTS' JOINT
SUPPLEMENTAL CITATION OF
AUTHORITIES

ER FINANCIAL & ADVISORY SERVICES,
L.L.C.,

LANCE MICHAEL BERSCH, and

DAVID JOHN WANZEK and LINDA
WANZEK, husband and wife,

Respondents.

ORIGINAL

Respondents Concordia Financing Company, Ltd., a/k/a Concordia Finance ("Concordia") and Respondents ER Financial & Advisory Services, LLC, Lance Michael Bersch, David John Wanzek and Linda Wanzek jointly provide the following supplemental citations of authority pursuant to this Court's direction.

For the propositions raised in the Motion to Dismiss raising staleness related to several defenses and the Reply noting that the doctrine of *nullum tempus occurrit regi* was no longer good law in Arizona.

1. *State v. Garcia*, 187 Ariz. 527, 529-530, 931 P.2d 427, 429-430 (App. 1996) ("Moreover, Arizona courts have moved away from rules based on the notion that the king can do no wrong, and toward balancing the injustice that might result from the application of the rule . . . against the effect that non-application would have on the state's effective exercise of its

1 sovereignty and any resulting damage to the public interest. Contrary to appellants'
2 assertion that egregious conduct is required, the state may be estopped even when the
3 government conduct complained of was in the form of inaction or silence.") (internal
4 citations and quotation marks omitted).

5 2. *Freightways, Inc. v. Arizona Corp. Comm'n*, 129 Ariz. 245, 248, 630 P.2d 541, 544 (1981)
6 ("Whatever the basis for these exceptions to the general rule, it would appear that where
7 the application of estoppel will not affect the exercise by the state of its governmental
8 powers and sovereignty, or bind it by unauthorized acts of its officers and employees,
9 estoppel will, when justice dictates, be applied to the state. See Annotation, 1 A.L.R.2d
10 338 (1948); Note, Never Trust A Bureaucrat: Estoppel Against the Government, 42
11 S.Cal.L.Rev. 391 (1969).").

12 3. *Tucson Elec. Power Co. v. Ariz. Dep't of Revenue*, 174 Ariz. 507, 516, 851 P.2d 132, 141
13 (App. 1992) ("While the above decisions are not directly in point, the common perception
14 running through them is a recognition that former rules based on the notion that 'the king
15 can do no wrong' should not be arbitrarily applied, but rather consideration should be given
16 in each instance to the injustice that might result from the application of the rule, balanced
17 against the effect that non-application would have on the state's effective exercise of its
18 sovereignty and any resulting damage to the public interest.").

19 Against the proposition made by the Division at oral argument that *Trimble* has been cited
20 several times positively.
21

22 4. *Mosey Mfg. Co. v. NLRB*, 701 F.2d 610, 614 (7th Cir. 1983) ("Obviously the issue should
23 not be settled by counting noses, even distinguished judicial ones."); *Doody v. Ryan*, 649
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1 F.3d 986, 1007 (9th Cir. 2011) ("The emphasis is clearly on application of law rather than
2 on counting noses.").

3
4 RESPECTFULLY SUBMITTED this 29th day of May, 2014.

5 BASKIN RICHARDS PLC

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1 ORIGINAL and thirteen copies of the foregoing
filed this 29th day of May, 2014 with:

2 Docket Control
3 Arizona Corporation Commission
1200 West Washington Street
4 Phoenix, AZ 85007

5 COPY of the foregoing hand-delivered
6 this 29th day of May, 2014 to:

7 Matthew J. Neubert
8 Director of Securities
Securities Division
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10 Phoenix, AZ 85007

11 COPY of the foregoing mailed
12 this 29th day of May, 2014 to:

13 James Burgess
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